

ACADEMIC DEAN AND PROVOST INSTRUCTION 1531.63B

From: Academic Dean and Provost

Subj: COMPLAINTS AGAINST FACULTY MEMBERS

Ref: (a) USNA Faculty Handbook  
(b) AAUP Statement on Professional Ethics  
(c) AAUP Statement on Academic Freedom  
(d) Department of Defense Directive 1350.2  
(e) OPNAV Instruction 5354.1E  
(f) USNAINST 12750.4

Encl: (1) Procedures For Handling Midshipman Complaints Against Faculty Members

1. Purpose. To publish instructions regarding the disposition of grievances against alleged misconduct of faculty members in their professional dealings with midshipmen, excluding accusations of sexual harassment or assault, use of inappropriate teaching materials, grading grievances, or issues of integrity in research and scholarly activity. These topics are covered in appropriate other Naval Academy instructions.

2. Cancellation. ACDEANINST 1531.63A. This instruction is a complete revision. Since changes are extensive, no special markings appear in the margins. Therefore, it should be read in its entirety.

3. Background. As provided in reference (a), U.S. Naval Academy (USNA) instructors have the right to academic freedom within the classroom. At the same time, there must be a distinction drawn between proper pedagogical activities that challenge students' beliefs, assumptions, and perceptions in order to facilitate their mental development, and behavior that is unprofessional and/or pedagogically inappropriate.

a. Pedagogical Techniques. Pedagogical techniques must make room for spirited exchanges over beliefs and ideas, but instructors are obliged to maintain a professional atmosphere that respects the students' dignity. The USNA subscribes to the American Association of University Professors' Statement on Professional Ethics (reference (b)): "As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly standards of their disciplines. They demonstrate respect for the student as an individual, and adhere to their proper role as intellectual guides and counselors." Respect for the midshipman as a student requires that faculty avoid discrimination on political grounds, or for reasons of race, religion, sex, ethnic origin, national origin, or ancestry. Professional ethics requires faculty members to conduct instruction in a professional and appropriate manner. Types of unacceptable behavior include: use of gratuitously abusive and/or demeaning language; failure to meet class; failure to prepare for class; evaluation of student work by criteria irrelevant to class performance; arbitrary denial of access to instruction.

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b. Academic Freedom. Academic freedom is a hallmark of an academic institution that values excellence in scholarship, free inquiry, and open discourse. Reference (c) provides a definition of academic freedom and a discussion of responsibilities attendant upon its exercise. The United States Naval Academy subscribes to the American Association of University Professors' statement on academic freedom, issued in 1940 with interpretations of 1970.

(1) A broad and well-rounded educational program such as the one that the Naval Academy seeks to provide its midshipmen will expose students, at times, to controversial ideas, challenge strongly held beliefs or value systems, or touch on sensitive areas. Indeed, it is not an uncommon pedagogical practice for an instructor to adopt an unusual, different, or unpopular stance to provoke discussion or to encourage students to analyze their own views or to assess the basis of their values.

(2) The Naval Academy has never imposed any test of propriety, ideology, or religion on its faculty or the academic program it offers. To do so would deny its faculty and its students the academic freedom to explore, to teach, and to learn. Instead, the Naval Academy has relied upon the good judgment and awareness of its faculty to be reasonable and to appreciate and respect the sensibilities of its midshipmen.

(3) Academic freedom is not a faculty member's license to say or do anything without restriction. Faculty members may be provocative. They are entitled to express their opinions and offer their scholarly views on the subject matter they teach, but they are also expected to treat their students with dignity and respect. With but rare exceptions, this has been the norm at the Naval Academy.

c. Individual Rights. The rights of individuals who work for the Department of Defense and the Department of the Navy are safeguarded by regulations such as are found in references (d) and (e).

(1) In particular, reference (e), which derives from reference (d), proscribes hostile work environments, defining the term as follows:

"An environment which prevents members from functioning to their full capacity, free of unlawful discrimination and SH [Sexual Harassment]. A hostile work environment unreasonably interferes with an individual's work performance. It need not result in concrete psychological harm to the victim but need only be perceived by a reasonable person, and is perceived by the victim, as hostile or offensive."

This definition involves the perception of the individual as well as another party, the reasonable person. The reasonable person standard is defined in the same reference:

An objective test used to determine if behavior meets the legal test for unlawful discrimination and SH. The test requires a hypothetical exposure of a reasonable person (third party) to the same set of facts and circumstances; if the behavior is offensive, then the test is met. The reasonable person standard considers the complainant's perspective and does not rely upon stereotyped notions of acceptable behavior within that particular work environment.

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(2) Reference (d) was created with an awareness of the needs of an academic institution to preserve the principles of academic freedom. In establishing the Defense Equal Opportunity Management Institute (DEOMI) whose purpose is to promote improved human relations throughout the Department of Defense, reference (d) requires that policies and procedures at DEOMI shall be consistent with the principles of responsible academic freedom at the National Defense University (NDU). NDU expects "all members of the University community to understand the importance of and to practice responsible academic freedom." In addition, NDU goes on to state that "The National Defense University has continually subscribed and subscribes now to the American Association of University Professors' statement on academic freedom, issued in 1940 with interpretations of 1970." The fact that the Department of Defense grants academic freedom to the DEOMI, the school that teaches those who will handle matters of sexual harassment and of hostile work environments is evidence that the Department of Defense is aware of the importance of the principle of academic freedom and that this is not inconsistent with the human relations objectives of the Department. The Naval Academy also subscribes to the "1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments."

4. Resolution. Every attempt shall be made to settle grievances against faculty members at the lowest possible level. Only when a resolution cannot be effected at one level in the academic chain of command shall it be forwarded to the next level. This chain is the Department Chair, the Division Director, the Academic Dean and Provost, and the Superintendent. In certain cases, the Faculty Senate will be called upon to provide important investigatory review and advisory opinions.

a. At all levels of the academic chain of command, the handling of the complaint should include the following:

- (1) Strict confidentiality;
- (2) Early notice to the faculty member involved;
- (3) Timely action;
- (4) Timely response to the complainant.

b. Enclosure (1) details procedures for handling complaints of faculty misconduct.

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PROCEDURES FOR HANDLING MIDSHIPMAN COMPLAINTS  
AGAINST FACULTY MEMBERS

1. Midshipman responsibility. Midshipmen have the right to report apparent occurrences of faculty misconduct toward students. If possible, the person alleging the misconduct (hereafter referred to as the complainant) should bring the concern directly to the faculty member whose conduct is questioned (hereafter referred to as the respondent). The complainant ought to enter into this discussion with an open mind. The complainant may not have interpreted the situation accurately and may thus be incorrect in believing that misconduct has occurred. The respondent may have inadvertently spoken or acted in a manner that gave rise to the appearance of misconduct, although no offense against the dignity of the student was intended. Direct discussion provides the opportunity to clarify any such misunderstandings. At times challenges to beliefs, assumptions, and perceptions in order to facilitate students' mental development may be mistaken for, or be perceived as, deliberate attempts to demean a student.

2. Faculty responsibility. A faculty member should always be aware of how his or her conduct may be perceived and should take corrective measures when alerted to the appearance of inappropriate behavior. Faculty members are expected always to behave in accordance with the highest standards of the professional ethics of the professoriate.

3. Protection of Respondent and Complainant. The Naval Academy will, to the greatest extent possible, protect the respondent and the complainant against capricious actions. The Academy will make every effort to protect the reputations of persons alleged to have engaged in misconduct. The Naval Academy will also seek to protect to the greatest extent possible the positions and reputations of those persons who make allegations in good faith. The respondent retains all his or her civil service protections.

4. Preliminary Inquiry. If the complainant believes that the respondent's explanation is inappropriate or inadequate, or if the complainant believes direct communication with the respondent is not feasible or desirable, the complainant should bring the matter to the attention of the faculty member's Department Chair. The Department Chair begins the first phase of the procedure, which is the PRELIMINARY INQUIRY into any suspected or alleged instance of faculty misconduct to determine whether an investigation is warranted. If the Department Chair has a conflict of interest in a particular case, the matter must be referred to the Division Director for action.

a. The Preliminary Inquiry is meant to distinguish serious incidents of faculty misconduct from trivial mistakes or appropriate pedagogical methods and to resolve simple issues quickly and with as much discretion as possible. At the discretion of the Chair, the Preliminary Inquiry may also include investigation into the respondent's past conduct toward students in order to determine whether or not a pattern of misconduct is present. In the Preliminary Inquiry, factual information is gathered and expeditiously reviewed to determine if an investigation of the charge is warranted.

(1) Inquiry Process. After interviewing the complainant, the Department Chair will discuss the allegation of misconduct with the faculty member against whom these charges have been brought and will outline the steps in the Preliminary Inquiry. The faculty member will be informed regarding the person or persons who made the allegation about his or her misconduct. The Department Chairs will either form a committee of inquiry from members of the department or turn to an appropriate standing committee of the department for the purpose of determining:

- (a) Whether there is merit to the allegation and, if so,
- (b) Whether it involves a possible minor or serious offense.

In investigating the complaint, the departmental committee is charged with gathering and evaluating all relevant information and evidence concerning the event(s). These sources of information may include instructor and course evaluations, testimony of witnesses, and records of relevant past administrative or disciplinary actions.

(2) Timeliness. The Preliminary Inquiry is to be undertaken with all due timeliness. Ordinarily, the Inquiry is to be completed within 30 days after the complaint has come to the Chair's attention. If the departmental committee requires more time, the members may request it from the Department Chair.

(3) Confidentiality. To the greatest extent possible, the proceedings of the Preliminary Inquiry will be kept confidential in order to protect the rights of all parties involved. All meetings of the inquiry committee will be closed.

(4) Respondent's rights and responsibilities during the Preliminary Inquiry. The respondent will be given an opportunity to comment on the allegations during the inquiry and to respond to a draft copy of the inquiry findings. If he or she comments on that report, the comments will be made part of the final inquiry record. The respondent may address the committee conducting the Preliminary Inquiry, if he or she desires. The respondent must have full and timely access to all evidence presented against him or her.

(5) Inquiry Findings. The completion of the Preliminary Inquiry is marked by submission of the written Findings to the Department Chair. On the basis of the Findings, the Department Chair will decide whether or not there is evidence of misconduct and the seriousness of the misconduct. The Chair will convey this information to the respondent and to the complainant, and, if there is a finding of misconduct, through the chain of command, to the Academic Dean and Provost. This finding will also be communicated to all appropriate persons to protect the reputation of anyone alleged to have engaged in misconduct when these allegations are not supported. If the Department Chair finds that there is evidence of misconduct, the Chair will meet with the faculty member to discuss the Findings.

(a) If respondent acknowledges the misconduct, the Chair will additionally determine, in consultation with the departmental committee and, separately, the servicing personnel management specialist, the Associate Dean for Faculty, and the Staff Judge Advocate, whether disciplinary action is warranted. If the Chair believes that the action warranted is beyond his or her authority, he or she will recommend the appropriate sanction to the Division Director. Disciplinary action taken or recommended by the Chair will reflect the seriousness of the misconduct and mitigating circumstances. If disciplinary action is taken, the faculty member sanctioned may exercise all rights of grievance and appeal.

(b) If, based on the Preliminary Inquiry, the respondent does not agree with the Department Chair's decision, the Department Chair will refer the matter to the Division Director.

b. If, in the disposition of the Preliminary Inquiry, the impartiality of the Department Chair is questioned, the concern will be brought to the attention of the Division Director.

5. Division Director. The Division Director is responsible for determining, in accordance with reference (f), the nature of the corrective action necessary to address the misconduct. If the Division Director believes that disciplinary action beyond his or her authority is warranted, he or she will recommend an appropriate remedy to the Academic Dean and Provost for his or her consideration and action. The Division Director will communicate his or her determination of the case to respondent before taking corrective action or forwarding a recommendation for corrective action to the Academic Dean and Provost. The Division Director will seek advice and assistance from the servicing personnel management specialist, the Associate Dean for Faculty, and the Staff Judge Advocate, as appropriate. The Division Director may also ask the Faculty Senate to initiate a Formal Investigation.

6. Formal Investigation. If the respondent does not agree with the Division Director's determination, respondent may appeal to the Faculty Senate to initiate a Formal Investigation. A Division Director may also ask the Faculty Senate to initiate a Formal Investigation.

a. The Senate Executive Committee will appoint an ad hoc committee (hereafter referred to as the Investigatory Committee), to consist of three tenured faculty members.

b. The Department Chair will provide the Investigatory Committee with the written Findings of the Preliminary Inquiry.

c. The Investigatory Committee will gather the relevant documents and will interview the respondent, complainant and anyone else deemed pertinent to the Investigation. The Investigatory Committee will act in consultation with the Staff Judge Advocate, the servicing personnel specialist, and the Associate Dean for Faculty. All meetings of the Investigatory Committee will be closed. The investigation proceedings will be kept confidential to the greatest extent possible.

d. The respondent will be given an opportunity to submit a written response to the charge and will also be afforded the opportunity to appear before the Investigatory Committee.

e. Upon completion of the Investigation, the Investigatory Committee will deliberate and deliver a written Report with findings and recommendations to the Academic Dean and Provost for final action and resolution. The investigation will not normally take more than 30 days. If the Investigatory Committee requires more time than this, it may request extensions from the Academic Dean and Provost.

f. The Investigatory Report will state whether there is merit to the complaint of faculty misconduct. If there is evidence of misconduct, the Report will also address the seriousness of that misconduct.